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international taxation: voluntary disclosure programs in specific CEE/SEE

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INTRODUCTION

Individuals, tax residents of CEE countries, are subject to income tax on their worldwide income. In general, all income, profits and gains are taxable, unless explicitly exempt by law. Consequently, tax residents are obliged to declare all foreign income including employment income, dividends, capital gains and interest in a resident country. In some countries a foreign bank account as such needs to be declared as well. This may apply even though an individual is not a direct holder of assets or a bank account but rather through a legal structure or an intermediary who holds assets on the individual's account.

Failure to declare foreign income and/or foreign bank account is considered at least as tax offence. Under certain conditions it may also be considered as a criminal offence and subject to criminal prosecution. In some countries non-declared income may be subject to special taxation including higher tax rates and penalties.

In order to avoid or at least substantially mitigate the risk of potential penalties for non-compliance the various CEE countries offer voluntary disclosure programmes. They are considered as opportunities offered by tax administrations to allow previously non-compliant taxpayers to correct their affairs under specified terms.

Please be provided below with a brief overview of limitation periods, potential consequences of non-compliance and voluntary disclosure programmes available in the particular CEE countries. Due to complexity of the voluntary disclosure programmes it is recommendable to appoint experienced tax advisor/lawyer for assistance and representation in these procedures.

CZECH REPUBLIC

Limitation periods

¬ Tax assessment procedure: 3 years, however it may be broken and prolonged up to 10 years under certain conditions.
¬ Tax offence procedure: 3 years.
¬ Criminal prosecution: From 5 up to 15 years, however it may be broken and prolonged under certain conditions.

Potential consequences of non-compliance

¬ Tax assessment procedure and penalties: Assessed tax, late payment interest with surplus of 14 % imposed on the repo rate (app. 0.25 %) of the Central Bank of Czech Republic, a penalty from 20 % up to 100% (in special cases) of the additionally assessed tax, a fine for not submitting tax return up to 5 % of additionally assessed tax (if the tax return was not initially submitted).
¬ Criminal prosecution: Imprisonment up to 10 years, financial penalty, confiscation of assets deriving from tax evasion, prohibition on business activities performance, company elimination.

Voluntary disclosure programme

¬ Benefits:
  ¬ The penalty from 20 % up to 100 % (in special cases) of the additionally assessed tax is not imposed if the voluntary disclosure is made before tax audit commencement.
  ¬ If a taxpayer pays all due taxes, including interest and potential penalties, institute of »effective regret« shall apply and a taxpayer avoids sanctions from criminal prosecution. »Effective regret« may be applied also if the criminal prosecution has already commenced.

¬ Consequences:
  ¬ All unpaid taxes have to be paid.
  ¬ Late payment interests are charged.
  ¬ A fine for not submitting a tax return may be imposed.

HUNGARY

Limitation periods

¬ Tax assessment procedure: 5 years (practically speaking 6 years).
¬ Tax offence procedure: 5 years (practically speaking 6 years).
¬ Criminal prosecution: From 5 years up to 15 years.

Potential consequences of non-compliance

¬ Tax assessment: Assessed tax, late payment interest at the rate of 200 % of the prime interest rate of the Hungarian Central Bank.
¬ Tax offence: a fine from 50 % up to 200 % of the additionally assessed tax, a fine for default from THUF 200 up to THUF 500 (EUR 670 up to EUR 1.675).
¬ Criminal prosecution: Imprisonment up to 10 years depending on the volume of tax shortage, confiscation of assets deriving from tax evasion.

Voluntary disclosure programme

¬ Benefits:
  ¬ Fines are not imposed since tax offence procedure is excluded.
  ¬ Criminal prosecution is excluded.

¬ Consequences:
  ¬ All unpaid taxes have to be paid.
  ¬ Self-revision surcharge is due at the prime interest rate (in repeated self-revisions multiplied by 1.5) of the Hungarian Central Bank if annual tax return has been already submitted before. If not, late payment interest at the rate of 200 % of the prime interest rate of the Hungarian Central Bank is due.

In addition to the general voluntary disclosure programme the so-called Stability Savings Account (»SSA«) as a special vehicle is also available in Hungary. It offers a kind of tax amnesty for money accumulated abroad if the amount is repatriated to Hungary. The amount deposited on the SSA is considered to be domestic income legally earned at the date of opening the SSA. As a general rule, the longer the deposited amount is kept on the individual's SSA the lower is the applicable tax base (down to 50 % from 200 % of the amount paid) and after a holding period of 5 years no tax liability arises. Late payment interest and penalties are not imposed. As a further benefit, money deposited between July 1, 2015 and July 1, 2016 is taxed at 10 % only after a holding period of 1 year. For the SSA social security charges are not payable. We call the attention that the SSA does not provide for a full amnesty; therefore, its utilization requires an utmost care.

POLAND

Limitation periods

¬ Tax assessment procedure: 5 years.
¬ Tax offence procedure: 5 years.
¬ Criminal prosecution: From 5 years up to 10 years.

Potential consequences of non-compliance

¬ Tax assessment: Assessed tax, late payment interest calculated as sum of 200 % of the Lombard published by the National Polish Bank and surplus of 2 %, however the rate calculated cannot be lower than 8 % (currently penalty interest amounts to 8 %).
¬ Special tax assessment: Special punitive tax rate of 75 % may be imposed on identified gap between income reported and assets and/or expenses of a taxpayer (deemed undeclared income)
¬ Tax offences: A fine from EUR 41 up to EUR 8.334.
¬ Criminal prosecution: Imprisonment up to 10 years, financial penalties.

Voluntary disclosure programme

¬ Benefits:
  ¬ Fines are not imposed since in general tax offence procedure is excluded.
  ¬ Criminal prosecution is in general excluded.
  ¬ Disclosed income cannot be subject to special taxation with punitive tax rate of 75 %.
¬ Consequences:
  ¬ All unpaid taxes have to be paid.
  ¬ Late payment interests are charged at the reduced rate of 75 % of the regular late payment interest rate (50 % from 2016 on provided that the tax declaration is corrected within 6 months after the deadline).

SLOVENIA

Limitation periods

¬ Tax assessment: 5 years (10 years for special tax assessment).
¬ Tax offence procedure: 2 years.
¬ Criminal prosecution: From 10 years up to 30 years.
¬ Confiscation of illicit property: May be started retroactively for all criminal procedures commenced after 1st of January 1990 on. The confiscation procedure can be commenced even if no final court decision has been adopted in a criminal prosecution.

Potential consequences of non-compliance

¬ Tax assessment: Assessed tax, late payment interest at the EURIBOR rate.
¬ Special tax assessment: Special punitive tax rate of 70 % is imposed on identified gap between income reported and assets and/or consumption of a taxpayer (deemed undeclared income).
¬ Tax offences: A fine from EUR 200 up to EUR 15.000.
¬ Criminal prosecution: Imprisonment up to 12 years, financial penalties, confiscation of assets deriving from tax evasion.
¬ Confiscation of illicit property: Assets, for which an individual cannot prove that they are financed from legal sources, are considered to be illicit assets and are confiscated.

Voluntary disclosure programme

¬ Benefits:
  ¬ Fines are not imposed since tax offence procedure is excluded.
  ¬ Disclosed income cannot be subject to special taxation with punitive tax rate of 70 %.
  ¬ Even though a criminal prosecution may start against taxpayer, according to current practice no criminal penalty is imposed.
¬ Consequences:
  ¬ All unpaid taxes have to be paid.
  ¬ Late payment interests are charged at EURIBOR increased for »punitive« interest rate mark-up from 1 % up to 4 % depending on time elapsed between voluntary disclosure and initial deadline for submitting tax returns.

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